

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 8921

IN THE MATTER OF:

Served August 19, 2005

Application of EMK SERVICES INC.)
for a Certificate of Authority --)
Irregular Route Operations)

Case No. AP-2005-05

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District, restricted to transportation in vehicles with a seating capacity of less than 16 persons only, including the driver. The application is unopposed.

The Compact, Title II, Article XI, Section 7(a), authorizes the Commission to issue a certificate of authority if it finds that the proposed transportation is consistent with the public interest and that the applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission. If an applicant does not make the required showing, the application must be denied under Section 7(b).

An applicant for a certificate of authority must establish financial fitness, operational fitness, and regulatory compliance fitness.¹ A determination of compliance fitness is prospective in nature.² The purpose of the inquiry is to protect the public from those whose conduct demonstrates an unwillingness to operate in accordance with regulatory requirements.³ Past violations do not necessarily preclude a grant of authority but permit the inference that violations will continue.⁴ The past conduct of an applicant's owners and officers is relevant to a determination of applicant's compliance fitness.⁵

Applicant held WMATC Certificate of Authority No. 855 from January 22, 2004 to November 29, 2004, when the Commission assessed a

¹ In re Zee Transp. Serv. Inc., No. AP-04-115, Order No. 8275 (Sept. 20, 2004); In re Nevah Transports, LLC, No. AP-02-121, Order No. 7001 (Jan. 21, 2003).

² Order No. 8275; Order No. 7001.

³ Order No. 8275; Order No. 7001.

⁴ Order No. 8275; Order No. 7001.

⁵ Order No. 8275; Order No. 7001.

\$750 civil forfeiture against applicant and revoked Certificate No. 855 on the grounds that applicant operated for three days while suspended and uninsured in knowing and willful violation of Article XI, Section 6(a) of the Compact and Order No. 8254.⁶

When an applicant has a record of violations, the Commission considers the following factors in assessing the likelihood of future compliance: (1) the nature and extent of the violations, (2) any mitigating circumstances, (3) whether the violations were flagrant and persistent, (4) whether applicant has made sincere efforts to correct its past mistakes, and (5) whether applicant has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.⁷

We do not view the three days of unlawful operations as persistent or flagrant, and applicant promptly paid the \$750 forfeiture, which may be viewed as correcting a past mistake.⁸

On the other hand, operating without proper authority is a serious violation.⁹ Further, when the signatories and Congress approved the Compact, they designated noncompliance with Commission insurance requirements as the single offense that would automatically invalidate a certificate of authority. They could not have sent a clearer message that maintaining proper insurance coverage is of paramount importance under the Compact.¹⁰ No mitigating circumstances are cited in the order revoking Certificate No. 855, and applicant has brought none to our attention in this proceeding.

Finally, there is little or no evidence that applicant has taken significant steps to prevent a recurrence of regulatory violations in the future. Applicant's president, who was in control when the violations took place, says he has hired an "assistant" to help run the business and ensure future compliance, and the self-described "assistant manager" -- who says he/she has invested \$18,000 in exchange for a fifty percent ownership interest in the company -- offers the same assurance. Ordinarily, bringing in a significant investor without a history of regulatory violations would support an expectation that the new investor's desire to safeguard his/her

⁶ In re EMK Servs. Inc., No. MP-04-153, Order No. 8440 (Nov. 29, 2004).

⁷ In re Global Express Limo. Serv., Inc., No. AP-02-32, Order No. 6772 (Aug. 13, 2002); In re Adventures By Dawn L.L.C., No. AP-99-68, Order No. 5837 (Mar. 14, 2000).

⁸ In re Capitol Bus Rental, Inc., t/a Capitol Tours, No. AP-95-50, Order No. 4719 (Dec. 14, 1995).

⁹ Order No. 6772.

¹⁰ In re Yai Med. Transp., L.L.C., No. MP-05-09, Order No. 8845 (July 22, 2005).

investment would naturally lead to enhanced compliance. In this case however, the new investor's subordinate position leaves the president in firm control of applicant and thus introduces some doubt as to how successful this particular investor's efforts are likely to be in that regard.¹¹

Indeed, the record shows that applicant's president and the new assistant manager have been less than attentive in ensuring applicant's compliance with comparable regulatory requirements since this application was filed. While this application was pending, the Commission obtained documents from the Taxpayer Services Division of the Maryland Department of Assessments and Taxation indicating that as of June 1 of this year, applicant was no longer in good standing with the State of Maryland for failure to timely file a personal property return for 2005. Applicant subsequently rectified the matter on advice of Commission staff and is now in good standing, but clearly applicant has yet to put in place personnel and/or process sufficient to prevent recurring violations of routine regulatory requirements.

On this record, we cannot say that applicant has established regulatory compliance fitness.

THEREFORE, IT IS ORDERED that the application of EMK Services Inc. for a certificate of authority, irregular route operations, is hereby denied without prejudice.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES, MILLER, AND SMITH:



William S. Morrow, Jr.
Executive Director

¹¹ Applicant has filed what appears to be a bank account signature card identifying the assistant manager as applicant's vice president. The submitted document is not dated, however, and has not been signed or otherwise authenticated by the bank.